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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,432	01/06/2004	Claude R. Allen	3830-13	3219
23117	7590	06/29/2004	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			SHRIVER II, JAMES A	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/751,432

Applicant(s)

ALLEN ET AL.

Examiner

J. Allen Shriver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/6/2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's submittal of a preliminary amendment was received January 6, 2004, wherein claims 1-22 were cancelled and new claims 23-29 were added.

Specification

2. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 23, 26-27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Beck (US Patent 2,405,636).** Beck discloses a hauler vehicle (10) for mining operations comprising a vehicle frame (11) coupleable with a source of motive power (45); and a conveyor (20) centrally disposed and coupled with the vehicle frame, wherein the vehicle frame and conveyor define a receiving end and a discharge end (See Fig. 1), and wherein the discharge end has a substantially fixed height (the specification does not disclose the discharge end of the

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conveyor being height adjustable); [**claim 26**] wherein the discharge end comprises a discharge boom integrated into the vehicle frame defining a one-piece frame construction (the drawings and specification does not disclose the discharge end of the conveyor being height adjustable, so Examiner has construed Beck's vehicle as only having a one-piece frame construction).

Regarding claims 27 and 29, under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). In this case, Applicant has only claimed the method of constructing a hauler vehicle possessing all the components set forth in the previous apparatus claims, therefore, Beck inherently teaches constructing a hauler vehicle having the claimed components.

5. Claims 23-24 and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Brasher (US Patent 4,576,107). Brasher discloses a hauler vehicle (10) for mining operations comprising a vehicle frame (12) coupleable with a source of motive power (this in an inherent component because without a source of motive power the vehicle could not operate); and a conveyor (50) centrally disposed and coupled with the vehicle frame, wherein the vehicle frame and conveyor define a receiving end (14) and a discharge end (16), and wherein the discharge end has a substantially fixed height (The discharge end is adjustable, however, it remains at a fixed height set by the operator); [**claim 24**] further comprising a full load indicator mechanism (See Figs. 2-3 and column 3, lines 10-27) at least partially adjacent the discharge end, the full load indicator mechanism providing an indication when the conveyor is substantially full.

Regarding claims 27 and 28, under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). In this case, Applicant has only claimed the method of constructing a hauler vehicle possessing all the components set forth in the previous apparatus claims, therefore, Brasher inherently teaches constructing a hauler vehicle having the claimed components.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brasher (US Patent 4,576,107) in view of Butler et al. (US Patent 5,873,431).** Brasher discloses the hauler vehicle as set forth above including a motor, but does not disclose wherein the source of motive power comprises the motor connected to a vehicle-mounted battery. Butler et al. discloses a hauler vehicle wherein the source of motive power comprises a motor (26) connected to a vehicle-mounted battery (27). At the time of the invention, it would have been obvious to a person of ordinary skill in this art to provide a vehicle mounted battery to supply electricity to

the motor disclosed in Brasher in view of the teaching of Butler et al. The motivation for doing so would have been to allow the vehicle to be completely autonomous, so that a separate electric power source is not needed to be connected to the hauler vehicle to provide electrical power for the motors.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yale (US Patent 4,291,777), Russell (US Patent 2,192,650), Lee (US Patent 2,599,061), Osgood (US Patent 2,634,008) and Frey et al. (US Patent 4,556,117) are relied on to show a mining shuttle car.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (703) 308-1224. The examiner can normally be reached on Mon-Thurs 7:30-6:00.

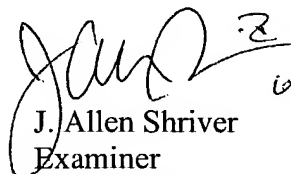
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris P. Ellis can be reached on (703) 305-0168. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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J. Allen Shriver
Examiner
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JAS